charge of vagrancy and the question was to what law to apply for a definition of this offense. The United States minister had, in 1907, made a regulation defining vagrancy. The court questions the power of the minister, since the act of 1906, to make such a regulation, but places its decision finally on the ground that the laws already provided a definition of the offense and that there was, therefore, no room for the exercise of ministerial power. The court calls attention to the fact that in finding a law for any particular case, the court may, under section four of the act of 1906, and section 4086 of the Revised Statutes, have recourse to the codes enacted for any territory of the United States, and for the District of Columbia, and finally to state laws—the last by virtue of the act of July 7, 1878, providing for the utilization of state laws in Federal Courts for the punishment of offenses committed within the states in any place over which the national government exercises exclusive jurisdiction, the punishment of which is not provided for by any law of the United States. In the case before it, the court availed itself of the Alaskan code.

It will be seen from the foregoing that the laws governing American citizens in China are indefinite, and that the court has a wide territory from which to select the rules to be applied in cases coming before it. Section five of the act of 1906 further gives the judge of the United States court power to modify the existing rules of procedure. The present judge of the United States court for China is an alumnus of this university. He occupies a unique position and it will be interesting to observe how logical and consistent a system of law he can evolve out of this chaos. He certainly has the good will of every Michigan graduate. G. O.

WHAT IS INTERSTATE COMMERCE?—In the case of *International Text-book Company* v. *Pigg*, Advance Sheets May 1, 1910 (30 Sup. Ct. 481) the Supreme Court of the United States, decided April 4, 1910, that a "corporation engaged in imparting instruction by correspondence, whose business involves the solicitation of students in other states by local agents, who are to collect and forward to the home office the tuition fees, and the systematic intercourse between the corporation and its scholars and agents, wherever situated, and the transportation of the needful books, apparatus, and papers," is engaged in interstate commerce, and a state statute which makes the filing of a statement of the financial condition of such a corporation a prerequisite to the right to do such business in such way in the state and to maintain a suit in the state court upon a contract connected therewith, is an unconstitutional interference with interstate commerce.

Mr. Justice HARLAN delivered the opinion, and Chief Justice FULLER and Mr. Justice MCKENNA dissented. "The executive offices of the company, as well as the teachers and instructors employed by it, reside and exercise their respective functions at Scranton [Pa.]. Its business is conducted by preparing and publishing instruction papers, text-books, and illustrative apparatus for courses of study to be pursued by correspondence, and the forwarding, from time to time, of such publications and apparatus to students. In the

conduct of its business the company employs local or traveling agents, called solicitor-collectors whose duties are to procure and forward to the company at Scranton, from persons in a specified territory, on blanks furnished by it, applications for scholarships in its correspondence schools, and also to collect and forward to the company deferred payments on scholarships. *** The scholarship and instruction papers, text-books and illustrative apparatus called for under each accepted application are sent directly to the applicant, and instruction is imparted by means of correspondence through the mails, between the company at its office in that city, and the applicant, at his residence in another state." In this case the company had no office in Kansas; the solicitor-collector was employed by the company upon a salary and commission, and he kept and maintained at his own expense an office in Topeka. The contract for a scholarship was signed by the defendant in Kansas, and was accepted by the company at Scranton.

Mr. Justice HARLAN held, as did the state supreme court, that this was *"doing business"* in the state of Kansas, within the meaning of the statute forbidding doing business unless conforming to the statute. "Its transactions in Kansas, by means of which it secured applications from numerous persons for scholarships, were not single transactions, such as might be deemed incidental to its general business as a foreign corporation, but were parts of its regular business continuously conducted in many states for the benefit of its correspondence schools,"—following *Cooper Manufacturing Company* v. *Ferguson,* 113 U. S. 727. Justice HARLAN quotes Chief Justice MARSHALL,—*Gibbons* v. *Ogden,* 9 Wheat 1,—"Commerce, undoubtedly, is traffic; but it is something more; it is *intercourse,*" and relies largely on the telegraph cases, *Pensacola Tel. Co.* v. *Western U. Tel. Co.* 96 U. S. 1, and *Western U. Tel. Co.* v. *Pendelton,* 122 U. S. 347, holding that *"the transmission* of intelligence," carrying "only *ideas, wishes, orders,* and *intelligence"* across state lines is interstate commerce, and says "If intercourse between persons in different states by means of telegraph messages conveying intelligence or information is commerce among the states, which no state may directly burden or unnecessarily encumber, we cannot doubt that intercourse or communication between persons in different states, by means of correspondence through the mails, is commerce among the states, *** especially where such intercourse and communication really relate to matters of regular, continuous business, and to the making of contracts and the transportation of books, papers, etc., appertaining to such business."

Commerce includes the *subject matter* of traffic and intercourse, the *fact* of traffic and intercourse, and the *instrumentalities* by which it is carried on. The *subject matter* may be "things, goods, chattels, merchandise, persons," telegraph or telephone messages, (*McCall* v. *California,* 136 U. S. 104; *Lottery Cases* 188 U. S. 321), and now apparently *instruction* or *knowledge* by mail, as above stated.

The *fact* of intercourse includes the negotiation of the *sale* of goods, wares and merchandise, which are in other states whether by solicitor or sample (*Stockard* v. *Morgan,* 185 U. S. 27; *Caldwell* v. *North Carolina,* 187 U. S. 622); the *purchase* of goods between citizens of different states, made

in either state (*McNaughton* v. *McGirl*, 20 Mont. 124, 63 Am. St. Rep. 610; *Buttfield* v. *Stranahan*, 192 U. S. 470); communication by telegraph or telephone (cases *supra*, and *Muskogee Tel. Co.* v. *Hall*, 118 Fed. 382); the *transit* of persons (*Crandall* v. *Nevada*, 6 Wall. 35; *Covington Bridge Co.* v. *Kentucky*, 154 U. S. 204, 218); the *transportation* of persons or property by boat, rail, or express (*The Passenger Cases*, 7 How. 283; *The Daniel Ball*, 10 Wall. 557; *Crutcher* v. *Kentucky*, 141 U. S. 47); the *piping* of oil or gas (*State* v. *Indiana &c. Co.*, 120 Ind. 575); *driving* of cattle (*Kelly* v. *Rhoads*, 188 U. S. 1), in completion of a commercial transaction across state lines, and the written documents whereby such transactions are effected (*Interstate Commerce Commission* v. *Baird*, 194 U. S. 25, 24 Sup. Ct. 563).

As to the *instrumentalities*, the commerce powers extend to interstate bridges (*Luxton* v. *North River Bridge*, 153 U. S. 525), and "from the horse with its rider to the stage coach, from the sailing vessel to the steamboat, from the coach and steamboat to the railroad, and from the railroad to the telegraph, as these new agencies come into use. They were intended for all times and all circumstances,"—(Chief Justice WAITE in *Pensacola Tel. Co.* v. *Western U. Tel. Co.* supra). In due time the flying machines will undoubtedly be included.

Insurance (*Hooper* v. *California*, 155 U. S. 648; *New York Insurance Co.* v. *Cravens*, 178 U. S. 389), loaning money, (*Nelms* v. *Mortgage Co.*, 92 Ala. 157), dealing in lands in other states (*Honduras &c. Co.* v. *State Board*, 54 N. J. L. 278), or in foreign bills of exchange (*Bamberger* v. *Schoolfield*, 160 U. S. 149), or in futures, *Ware and Leland* v. *Mobile County*, 209 U. S. 405, 121 Am. St. Rep. 21, 24, 28 Sup. Ct. 526), or carrying on a building and loan association business (*Southern Building & L. Ass'n* v. *Norman*, 98 Ky. 294), or a brokerage or commission business (*United States* v. *Hopkins*, 171 U. S. 578), or the transfers of corporate shares, (*New York* v. *Reardon*, 204 U. S. 152, 27 Sup. Ct. 188), or the sale or transportation of the waters of one state into another state, (*Hudson County Water Co.* v. *McCarter*, 209 U. S. 349, 28 Sup. Ct. 529) is not *interstate* commerce, in such a sense as to prevent state regulation. Neither is mining (*Utley* v. *Mining Co.*, 4 Colo. 369), nor the production or manufacture of things intended for interstate commerce, (*United States* v. *E. C. Knight Co.*, 156 U. S. 1; *Kidd* v. *Pearson*, 128 U. S. 1, 9 Sup. Ct. 6), nor gathering them together for the purpose of sending them to other states (*Diamond Match Co.* v. *Ontonagon*, 188 U. S. 82), or after sending them there keeping them there for the purpose of use or sale (*Brown* v. *Houston*, 114 U. S. 622; *Pittsburg Coal Co.* v. *Bates*, 156 U. S. 577) if not in the original package (*May* v. *New Orleans*, 178 U. S. 496). H. L. W.

WAIVER OF CONDITIONS IN INSURANCE POLICY BY KNOWLEDGE OF AGENT WHERE POLICY ATTEMPTS TO PROVIDE THE ONLY WAY IN WHICH WAIVER SHALL TAKE PLACE.—The difficulty of this subject is illustrated by the recent decision of the Federal Supreme Court in *Penman* v. *St. Paul Fire and Marine Ins. Co.* (1910), 30 Sup. Ct. 312. The facts are practically as follows: